

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Bähren et al.

GROUP: 2152

SERIAL NO: 09/892,706

EXAMINER: Duyen My Doan

FILED: June 27, 2001

FOR: SYSTEM FOR INTER-NETWORK COMMUNICATIONS
[as amended]

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF

This appeal is in response to the Official Action dated January 8, 2007, which has been made final and the Notice of Appeal filed March 30, 2007. A check including the fee of \$500 pursuant to 37 C.F.R. §41.20(b) is enclosed herewith.

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date below, with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Sarah L. Henry
Sarah L. Henry
5/30/07
Date

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I. REAL PARTY IN INTEREST

The real party in interest is Harman Becker Automotive Systems GmbH of Karlsbad, Germany.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

On March 30, 2007, the appellant appealed from the final rejection of claims 6, 18 and 25 under 35 U.S.C. §112, first paragraph – written description, and claims 6, 8, 12, 14-18 and 23-25 under 35 U.S.C. §103. Claims 6, 8, 12, 14-18 and 23-25, which are set forth in Appendix A attached hereto, are all the remaining claims in this application.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to communications between first and second networks.

Claim 6 recites a network. The various elements recited in claim 6 are discussed in the specification in at least the following locations of the published application, amongst others:

FEATURES OF CLAIM 6	SPECIFICATION
A network comprising:	Paragraph [0011], <i>inter alia</i>
a plurality of network units;	Paragraph [0011], <i>inter alia</i>
a Media Oriented Systems Transport (MOST) network communicably linking the plurality of network units in a network configuration; and	Paragraphs [0011]-[0012], <i>inter alia</i>
where a first network unit, comprising a wireless telephone, of the plurality of network units has installed a TCP/IP network layer of a second network in combination with an associated application program interface, and where a proxy computer is installed in each of the plurality of network units other than the first network unit.	Paragraphs [0013]-[0014], <i>inter alia</i>

Claim 18 recites a network for providing the capability to communicate over the Internet.

The various elements recited in claim 18 are discussed in the specification in at least the following locations of the published application, amongst others:

FEATURES OF CLAIM 18	SPECIFICATION
A network for providing the capability to communicate over the Internet, comprising:	Paragraph [0007], <i>inter alia</i>
a plurality of network units connected in a network configuration, including,	Paragraphs [0007], [0012], <i>inter alia</i>
a first network unit, comprising a wireless telephone, capable of transmitting and receiving external communications and having installed a TCP/IP network layer of the Internet in combination with an associated application program interface;	Paragraph [0013], <i>inter alia</i>
a plurality of remaining network units each having installed a proxy computer; and	Paragraph [0014], <i>inter alia</i>
a Media Oriented Systems Transport (MOST) network for communicably linking the network units in the network configuration.	Paragraphs [0011]-[0012], <i>inter alia</i>

Claim 25 recites a vehicle-hosted multimedia system for providing the capability to communicate over the Internet. The various elements recited in claim 25 are discussed in the specification in at least the following locations of the published application, amongst others:

FEATURES OF CLAIM 25	SPECIFICATION
A vehicle-hosted multimedia system for providing the capability to communicate over the Internet, comprising:	Paragraph [0008], <i>inter alia</i>
a plurality of network units connected in a network configuration, including,	Paragraphs [0007], [0012], <i>inter alia</i>
a wireless telephone configured as a network unit capable of transmitting and receiving external communications and having installed a Transmission Control Protocol (TCP) or Internet Protocol (IP) network layer of the Internet in combination with an associated application program interface;	Paragraph [0013], <i>inter alia</i>
a plurality of network units other than the telephone, each comprising a proxy computer; and	Paragraph [0014], <i>inter alia</i>
a Media Oriented Systems Transport (MOST) network for communicably linking the network units in the network configuration.	Paragraphs [0011]-[0012], <i>inter alia</i>

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 6, 18 and 25 are unpatentable under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement.

Whether claims 6, 8, 12, 14-18 and 23-25 are obvious in view of the combined subject matter disclosed in Applicant Admitted Prior Art (hereinafter “AAPA”) and U.S. Patent 6,246,688 to Angwin (hereinafter “Angwin”).

VII. ARGUMENT

REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH – WRITTEN DESCRIPTION

CLAIM 6

The Official Action contends that the feature of the first network unit comprising a wireless telephone in claim 6 was not described in the specification. (Official Action, pg. 2). The Official Action contends that “*the most applicant described was the first network unit is a telephone (see applicant’s specification pg. 15, lines 10-13) not a wireless telephone.*” (Official Action, pg. 2).

However, it is submitted that the disclosure in the specification of a “telephone”, as noted in the Official Action mentioned above, constitutes a sufficient disclosure of a “wireless telephone” to satisfy the written description requirement. That is, a “wireless telephone” is one type of a “telephone” or a subset of “telephones” in general. As such, a “wireless telephone” is included within the plain and ordinary meaning of a “telephone”, in fact more so when a telephone is utilized in the context of a vehicle, as in the present claimed invention.¹ Specifically, claim 6 recites a MOST network which communicably links the plurality of network units in a network configuration. Also, a MOST network is normally located in a vehicle, as that is its intended application (see, for example, <http://www.mostcooperation.com/technology/index.php> “*Media Oriented Systems Transport is a multimedia fiber-optic network optimized for automotive applications. It is a network developed by the automotive industry for the automotive industry.*”). Thus, most often a vehicle includes a wireless or cellular telephone, and not some other type of “hard-wired” telephone of the type

¹ See MPEP§2163.02, “[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.”

found, for example, in a home. That is, in this context, “telephone” is reasonably construed to mean a “wireless telephone”.² Therefore, the MOST network feature of claim 6 having a first network unit that comprises a “wireless telephone” is sufficiently described by the term “telephone”, notwithstanding the absence of any “wireless” modifier or adjective before the term “telephone”.

In light of the foregoing, it is respectfully submitted that a “wireless telephone” is adequately described in the present specification as filed. As such, it is submitted that the rejection of claim 6 under 35 U.S.C. §112, first paragraph, for allegedly failing to satisfy the written description requirement is now moot and should be removed, and that claim 6 is in condition for allowance and should be passed to issuance.

CLAIM 18

Since claim 18 currently stands rejected for the same reasons as claim 6, the arguments above with respect to claim 6 apply as well to claim 18. As a result, it is respectfully requested that the 35 U.S.C. §112, first paragraph, written description, rejection of claim 18 is now moot and should be removed, and that claim 18 is in condition for allowance and should be passed to issuance.

² In re Alton, 76 F.3d 1168, 1175, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996), “[i]f a person of ordinary skill in the art would have understood the inventor to have been in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate written description requirement is met.”

CLAIM 25

Since claim 25 currently stands rejected for the same reasons as claim 6, the arguments above with respect to claim 6 apply as well to claim 25. As a result, it is respectfully requested that the 35 U.S.C. §112, first paragraph, written description, rejection of claim 25 is now moot and should be removed, and that claim 25 is in condition for allowance and should be passed to issuance.

REJECTION UNDER 35 U.S.C. §103(a) –AAPA IN VIEW OF ANGWIN

CLAIM 6

Claim 6 recites a network that includes:

“a plurality of network units;
a Media Oriented Systems Transport (MOST) network communicably linking the plurality of network units in a network configuration; and
where a first network unit, comprising a wireless telephone, of the plurality of network units has installed a TCIP/IP network layer of a second network in combination with an associated application program interface, and where a proxy computer is installed in each of the plurality of network units other than the first network unit.” (emphasis added; cl. 1).

The Official Action contends that AAPA discloses all of the features of claim 6, except for, *inter alia*, a proxy for communication with other units. (Official Action, pg. 3). The Official Action contends that since the disclosure does not explicitly define the term proxy, the term proxy “... could be read into any type of interface, which enable a network unit to communicate with an interfaces of another network units.” (emphasis added; Official Action, pg. 3). The Official Action then contends that “[s]ince the MOST is known and since the units in the Most readily communicated to each other, i.e., network together, the proxy, therefore, apparently, is an inherent feature in the MOST.” (emphasis added; Official Action, pg. 3).

Applicant respectfully disagrees with these contentions in the Official Action regarding the term “proxy”.

First, it is respectfully submitted that the pure unsupported conjecture in the Official Action regarding the interpretation of the term “proxy” as “any type of interface” is unsupported by the known general definition associated with the term “proxy”. The term “proxy computer” as used in the claims is consistent with the definition from the Microsoft Press Dictionary that was cited in the Official Action of September 23, 2005. Specifically, in that Official Action it was stated that *“in interpretation of the term proxy, Examiner relied upon Microsoft Press Dictionary, which given the meaning of proxy as ‘n. A firewall component that manages Internet traffic to and from a local area network (LAN) and can provide other features, such as document caching and access control. A proxy server can improve performance by supplying frequently requested data, such as a popular Web page, and can filter and discard requests that the owner does not consider appropriate, such as requests for unauthorized access to proprietary files. See also firewall.”* (Official Action, 9/23/2005, pg. 6). Thus, from the definition provided in the well known Microsoft Press Dictionary it is clear that the term proxy can **NOT** be construed as any type of interface as alleged in the Official Action. The Examiner’s own previous citation to a dictionary definition of the term “proxy” is curiously inconsistent with the Examiner’s current position that the “proxy” can be any type of interface.

The network configuration illustrated in FIG. 1 of the present application is such that if a network unit such as unit 105 makes a request for an Internet page, then the request must go via either first adjacent unit 104 or second adjacent unit 106. Therefore, since the units 104 and 106 each have a proxy computer as claimed, both units can perform the dictionary defined

proxy function of “*managing Internet traffic to and from a local area network and can provide other features, such as document caching and access control.*” (Microsoft Press Dictionary, see pg. 6 of the Official Action of 9/23/2005). The network configuration of the claimed invention reduces the number of requests to the Internet, since the page requested by a network unit may be cached in the proxy computer of one of the other units. **Therefore, in the prior Official Action of September 23, 2005, the Examiner inconsistently cited a specific dictionary definition of “proxy”, and yet in the present Official Action the Examiner contends that the term “proxy” reads on any type of interface.** The Applicant is not willing accept any judicial notice with respect to the overly simplistic and incorrect definition of a proxy as “*any type of interface*” that the present Official Action attempts to ascribe thereto. In addition, the Examiner’s recent contention that the term proxy may be construed as “*any type of interface*” is inconsistent with the definition from the Microsoft Press Dictionary that the Examiner himself provided.

Second, the applicant respectfully disagrees with the contention in the Official Action that proxy is an inherent feature of the MOST specification. A review of the large index of the MOST Specification, Revision 2.2, dated November 11, 2002, fails to reveal any occurrence of the term “proxy”, or the term “proxy” in combination with other terms within the index. Accordingly, given the expansive index set forth in the MOST Specification, if proxy is indeed an inherent feature of MOST as alleged in the Official Action, then it is more than reasonable to expect the term proxy to appear within the index of the MOST Specification. However, the fact that the term proxy is NOT in the index of the lengthy MOST Specification strongly suggests that the conclusionary and unsupported contention in the Official Action that the proxy is an inherent feature of MOST is incorrect.

Furthermore, a fair and proper reading of both AAPA and Angwin reveals that the combined teachings neither disclose nor suggest the function of a proxy computer “... *installed in each of the plurality of network units other than said first network unit.*” (cl. 1). The Official Action responded that “*Angwin teaches a cellular phone acting as a proxy, adopting a concept of singularity to a plurality is a mere replication, which is obvious and not patentably distinct ... by installing in plurality of network units other than the first network unit is a matter of implementation.*” (Official Action, pgs. 4-5). However, if the definition of proxy is utilized as suggested in the Official Action, then the combination of AAPA and Angwin is incapable of rendering the claimed invention obvious since each network unit would require a proxy (based on the definition suggested in the Official Action) to communicate. In contrast, claim 6 expressly recites that first network unit does not include a proxy computer and only the remaining network units include a proxy. Therefore, by either definition of proxy, it is respectfully submitted that the teachings of the combined references are incapable of rendering obvious the subject matter set forth in claim 6. In addition, the contention in the Official Action noted above that “*by installing in plurality of network units other than the first network unit is a matter of implementation*” is inconsistent with either definition of “proxy”, further evidencing the incapability of AAPA and Angwin to render claim 6 obvious.

In light of the foregoing, the combination of AAPA and Angwin fails to render claim 6 obvious. Assuming, however, for the moment, without admitting that AAPA and Angwin are even properly combinable, it is respectfully submitted that a combination of AAPA and Angwin does not meet all of the features of claim 6. As discussed above, this is because of the improper contentions regarding the term “proxy” and the failure of AAPA and Angwin to disclose the

claimed features of “*and where a proxy computer is installed in each of the plurality of network units other than the first network unit.*”

As a result, it is submitted that the obviousness rejection of claim 6 is now moot and should be removed, and that claim 6 is in condition for allowance and should be passed to issuance.

CLAIM 18

Since claim 18 currently stands rejected for the same reasons as claim 6, the arguments above with respect to claim 6 apply as well to claim 18. As a result, it is respectfully requested that the obviousness rejection of claim 18 is now moot and should be removed, and that claim 18 is in condition for allowance and should be passed to issuance.

CLAIM 25


Since claim 25 currently stands rejected for the same reasons as claim 6, the arguments above with respect to claim 6 apply as well to claim 25. As a result, it is respectfully requested that the obviousness rejection of claim 25 is now moot and should be removed, and that claim 25 is in condition for allowance and should be passed to issuance.

CONCLUSION

For all the foregoing reasons, we submit that the rejection of claims 6, 8, 12, 14-18 and 23-25 is erroneous and reversal thereof is respectfully requested.

If there are any additional fees due in connection with the filing of this appeal brief, please charge them to our Deposit Account 50-3381. If a fee is required for any extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should be charged to the above Deposit Account.

Respectfully submitted,

A handwritten signature in cursive script, reading "Patrick O'Shea", written in black ink.

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CLAIMS APPENDIX

1. (Cancelled)

2. (Cancelled)

3. (Cancelled)

4. (Cancelled)

5. (Cancelled)

6. (Previously Presented) A network comprising:

 a plurality of network units;

 a Media Oriented Systems Transport (MOST) network communicably linking the plurality of network units in a network configuration; and

 where a first network unit, comprising a wireless telephone, of the plurality of network units has installed a TCIP/IP network layer of a second network in combination with an associated application program interface, and where a proxy computer is installed in each of the plurality of network units other than the first network unit.

7. (Cancelled)

8. (Previously Presented) The network of claim 6, where the network comprises the Internet.

9. (Cancelled)

10. (Cancelled)

11. (Cancelled)

12. (Previously Presented) The network of claim 6, where the first network transmits and receives external communications.

13. (Cancelled)

14. (Previously Presented) The network of claim 6, where each of a plurality of the network units other than the first network unit comprise a computer platform where a proxy computer is installed in the form of one or more software programs.

15. (Previously Presented) The network of claim 6, where the network units comprise equipment of a multimedia system.

16. (Previously Presented) The network of claim 6, where the plurality of network units comprise one or more data sinks and one or more data sources.

17. (Previously Presented) The network of claim 15, where the one or more data sinks comprise one or more of the group including a car radio, a CD player, a video recorder, a TV tuner, an audio amplifier, and a display screen.

18. (Previously Presented) A network for providing the capability to communicate over the Internet, comprising:

- a plurality of network units connected in a network configuration, including,

- a first network unit, comprising a wireless telephone, capable of transmitting and receiving external communications and having installed a TCP/IP network layer of the Internet in combination with an associated application program interface;

- a plurality of remaining network units each having installed a proxy computer;

- and

- a Media Oriented Systems Transport (MOST) network for communicably linking the network units in the network configuration.

19. (Cancelled)

20. (Cancelled)

21. (Cancelled)

22. (Cancelled)

23. (Previously Presented) The network of claim 18, where the network units comprise equipment of a multimedia system.

24. (Previously Presented) The network of claim 18, where the plurality of network units other than the first network unit comprise one or more data sinks and one or more data sources.

25. (Previously Presented) A vehicle-hosted multimedia system for providing the capability to communicate over the Internet, comprising:

a plurality of network units connected in a network configuration, including,

a wireless telephone configured as a network unit capable of transmitting and receiving external communications and having installed a Transmission Control Protocol (TCP) or Internet Protocol (IP) network layer of the Internet in combination with an associated application program interface;

a plurality of network units other than the telephone, each comprising a proxy computer; and

a Media Oriented Systems Transport (MOST) network for communicably linking the network units in the network configuration.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None